

USDC IN/ND case 4:20-cv-00044-TLS-JEM document 3 filed 11/22/19 page 1 of 8

STATE OF INDIANA) IN THE NEWTON COUNTY SUPERIOR COURT
) SS.
COUNTY OF NEWTON) SITTING AT KENTLAND, INDIANA

DANIEL NELSON and DIANA NELSON,)
Individually and as Husband and Wife)
)
Plaintiffs)
)
v.) CAUSE NO. **56D01-1911-CT-001189**
)
DIVERSIFIED LOGISTICS SERVICES,)
INC., LIBERTY TIRE SERVICE OF)
OHIO, LLC, and JORGE DIAZ,)
)
Defendants.)
)

COMPLAINT

COUNT 1

Come now the plaintiffs, Daniel Nelson and Diana Nelson, individually and as husband and wife, by their attorneys, Schafer & Schafer LLP Attorneys at Law, and for Count I of their Complaint against the defendants, Diversified Logistics Services, Inc., Liberty Tire Service of Ohio, LLC and Jorge Diaz allege and state:

1. That plaintiffs, Daniel Nelson and Diana Nelson at all times relevant herein were citizens of the State of Indiana; County of Newton, Town of Lake Village.
2. That at all times relevant herein defendant, Jorge Diaz, was operating a tractor trailer semi truck in which the tractor was owned and maintained by defendant, Diversified Logistics Services, Inc., and the trailer was owned and maintained by defendant, Liberty Tire Service of Ohio, LLC, and defendants, Jorge Diaz and Diversified Logistics Services, Inc., were permissive users of said trailer.
3. That at all times relevant herein defendant, Jorge Diaz, was working within the

scope and course of his employment with defendant, Diversified Logistics Services, Inc.

4. That on and prior to May 16, 2019 State Road 41 was a public roadway running in a generally north and south direction in the Town of Morroco, County of Newton, State of Indiana.

5. That on or about May 16, 2019 plaintiff, Daniel Nelson, was lawfully driving his tractor northbound on State Road 41 in Morroco, Indiana. That at the same time defendant, Jorge Diaz, who was also driving north on State Road 41, carelessly and negligently attempted to pass Daniel Nelson and struck the rear end of Daniel Nelson's tractor, causing the tractor to roll over and eject Mr. Nelson from said tractor.

6. That defendant, Jorge Diaz, carelessly, negligently, willfully and wantonly, failed to control his vehicle thereby causing the aforesaid collision, and further, was guilty of one or more of the following wrongful acts or omissions:

- a. Carelessly, negligently, willfully and wantonly failed to maintain a proper and sufficient lookout.
- b. Carelessly, negligently, willfully and wantonly was driving too fast for the conditions.
- c. Carelessly, negligently, willfully and wantonly failed to keep his motor vehicle under proper control.
- d. Carelessly, negligently, willfully and wantonly operated his tractor trailer semi truck so as to cause a collision with plaintiff's tractor.
- e. Carelessly, negligently, willfully and wantonly attempted to pass plaintiff tractor when it was unsafe to do so.
- f. Carelessly, negligently, willfully and wantonly failed to inspect the truck prior to its use.
- g. Carelessly, negligently, willfully and wantonly failed to follow the Federal Motor Carrier Safety Regulations.
- h. Carelessly, negligently, willfully and wantonly failed to use the care an

ordinarily careful person would have used under the same or similar circumstances.

7. That defendants, Diversified Logistics Services, Inc. and Liberty Tire Service of Ohio, LLC, carelessly, negligently, willfully and wantonly failed to properly maintain their tractor trailer semi truck thereby causing the aforesaid collision, and further, was guilty of one or more of the following wrongful acts or omissions:

- a. Carelessly, negligently, willfully and wantonly failed to keep their truck and trailer in proper working condition.
- b. Carelessly, negligently, willfully and wantonly failed to follow the Federal Motor Carrier Safety Regulations.
- c. Carelessly, negligently, willfully and wantonly failed to use the care an ordinarily careful tractor trailer semi truck company would have used under the same or similar circumstances.
- d. Carelessly, negligently, willfully and wantonly failed to use the care an ordinarily careful trailer company would have used under the same or similar circumstances.

8. That as a direct and proximate result of one or more of the aforesaid wrongful acts or omissions of the defendants, plaintiffs' tractor was substantially damaged and plaintiffs further lost the use of the same.

9. That as a further direct and proximate result of one or more of the aforesaid wrongful acts or omissions of the defendants plaintiff, Daniel Nelson, sustained severe and permanent injuries, disfigurement, deformity, physical pain, mental suffering, is unable to function as a whole person, and has a diminished quality of life.

10. That as a further direct and proximate result of one or more of the aforesaid wrongful acts or omissions of the defendants, plaintiff, Daniel Nelson, suffered multiple injuries including but not limited to a traumatic brain injury, multiple rib fractures, an open book pelvis fracture with diastasis/separation of the sacroiliac joints and pubic symphysis, commuted fracture

of the posterior aspects of the bilateral iliac bones, acute kidney failure, degloving of the sacral region, hemorrhagic anemia resulting in multiple transfusions, a fracture of the lumbar spine at L5, facial lacerations, and acute respiratory failure, all of which require medical care and treatment, and further, has become liable for past and future medical expenses, has past and future lost wages and earning capacity, has and will be kept from attending to his ordinary affairs and duties and has and will lose great gains which he otherwise would have made and acquired and has sustained permanent injuries that has irreversibly altered his life.

WHEREFORE, plaintiffs, Daniel Nelson and Diana Nelson, individually and as husband and wife, demand judgment against the defendants, Diversified Logistics Services, Inc. and Liberty Tire Service of Ohio, LLC, and Jorge Diaz for such sums as are reasonable in the premises, for compensatory and punitive damages, for costs of this action and for all other just and proper relief in the premises.

COUNT II

Come now the plaintiffs, Daniel Nelson and Diana Nelson, individually and as husband and wife, by their attorneys, Schafer & Schafer Attorneys at Law, and for Count II of their Complaint against the defendants, Diversified Logistics Services, Inc. and Liberty Tire Service of Ohio, LLC, and Jorge Diaz allege and state:

1-10. The plaintiffs re-allege and incorporate each and every allegation contained in Rhetorical Paragraph One (1) through and including Rhetorical Paragraph Ten (10) of Count I as Rhetorical Paragraph One (1) through and including Rhetorical Paragraph Ten (10) of Count II as though the same were fully and completely set forth herein.

11. That on and prior to May 16, 2019, the plaintiffs were the lawfully wedded spouses of each other and were living together as husband and wife, and by virtue of that

marriage, plaintiffs became and were entitled to the companionship, society, services, affection and consortium of each other.

12. That as a direct and proximate result of the injuries sustained by the plaintiffs, each plaintiff has been deprived of the companionship, society, services, affection, consortium of the other and further, have been obligated to incur indebtedness for medical expenses incurred on their behalf which were necessitated by the defendants' negligent acts and omissions; and further, will continue to incur indebtedness for future medical care and treatment and loss of their spouse's services in attempting to alleviate or remedy their condition.

WHEREFORE, plaintiffs, Daniel Nelson and Diana Nelson, individually and as husband and wife, demand judgment against the defendants, Diversified Logistics Services, Inc. and Liberty Tire Service of Ohio, LLC, and Jorge Diaz for such sums as are reasonable in the premises, for compensatory and punitive damages, for costs of this action and for all other just and proper relief in the premises.

Respectfully submitted,

SCHAFFER & SCHAFFER, LLP
ATTORNEYS AT LAW

BY: /s/Todd S. Schaffer
TODD S. SCHAFFER
Atty #29474-64
Attorney for Plaintiffs

JURY DEMAND

Come now the plaintiffs, by counsel, and demand a trial by jury on issues triable by a jury.

Respectfully submitted,

SCHAFER & SCHAFER, LLP
ATTORNEYS AT LAW

BY: */s/Todd S. Schafer*
TODD S. SCHAFER